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No. 01-1092

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

COLT INDUSTRIES OPERATING CORPORATION
INFORMAL PLAN FOR PLANT SHUTDOWN BENEFITS
FOR SALARIED EMPLOYEES,
Petitioner,

v.

GEORGE E. HENGLEIN *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

I. THE CIRCUIT SPLIT ON THE APPLICABLE LAW IS REAL AND PERSISTENT

Respondents assert that the circuit split is the product of factual differences in the cases, rather than different legal concepts about the meaning of ERISA. According to Respondents, the circuit courts only apply ERISA when "critical acts relating to the causes of action occurred after the enactment of ERISA." Br. at 10.

This distinction is simply untrue. In *Tanzillo v. Local 617, Int'l Bhd. Of Teamsters*, 769 F.2d 140, 144 (3d Cir. 1985), the claim was "based on Tanzillo's employment before January 1, 1975." In *Rodriguez v. MEBA Pension Trust*, 872 F.2d 69, 72 (4th Cir.), *cert. denied*, 493 U.S. 872 (1989), the "critical acts or omissions" occurred in 1969 and 1973. In both cases, however, the circuit courts applied ERISA to these pre-ERISA acts.

The judges who wrote those opinions expressly acknowledged that they were creating or continuing a conflict. In *Tanzillo*, the Third Circuit adopted the dissent in *Menhorn v. Firestone Tire & Rubber Co.*, 738 F.2d 1496 (9th Cir. 1984), and "prefer[red] to disavow Menhorn rather than to rely on its distinguishing characteristics." 769 F.2d at 144 & n.5. In *Rodriguez*, the Fourth Circuit recognized that, "[a]mong the circuits to consider this issue, two competing views have evolved" and "[w]e adopt the Third Circuit view." 872 F.2d at 72. Justice White explicitly recognized that *Rodriguez* applied substantive ERISA law "to a denial of benefits, when the denial is based on an action by the plan prior to ERISA's effective date" and that this holding directly conflicted with *Menhorn*. *McMonagle v. Northeast Women's Center, Inc.*, 493 U.S. 901, 905 (1989) (White, J., dissenting from denial of certiorari).

This petition squarely presents that conflict. The issue is whether any further benefits accrued under the Informal Plan after December 1, 1972. That issue depends entirely on the legal effect of the board resolution of that date. If state law applies, no further benefits accrued, because the District Court held that those resolutions were fully effective under state law. The Court of Appeals could hold that benefits continued to accrue only by applying substantive ERISA law to that pre-ERISA event.

Respondents repeatedly imply that Petitioner is attempting to relitigate issues already determined against it. Again, this is simply untrue. The issue in the prior *Henglein* appeals was whether the Informal Plan existed in 1983. Petitioner does not challenge the district court's holding that it did exist in 1983. The issue in this petition is whether Respondents continued to accrue benefits after December 1, 1972. That is an issue that the parties did not and could not have previously litigated, since the previous district court rulings never awarded Respondents any benefits at all.

II. RESPONDENTS' JUDICIAL ESTOPPEL ARGUMENT IS AN IRRELEVANT RED HERRING

The balance of Respondents' brief asserts that the Informal Plan is estopped from seeking a proper application of ERISA, by virtue of prior allegedly inconsistent positions on the issue. That is completely irrelevant to whether this Court ought to resolve a circuit conflict of 20 years' duration.

In any event, the Informal Plan has never argued that substantive ERISA law governs the continued accrual of benefits after December 1, 1972. Rather, its argument was that Respondents' cause of action arose under ERISA because the acts or omissions that gave rise to their claims – the denial of benefits – occurred after the effective date of ERISA. That the federal courts have jurisdiction of these claims, however, does not dictate that substantive ERISA law governs the merits. When, as here, the dispositive events occurred before 1975, "ERISA cannot apply retroactively to govern" plaintiffs' rights or the Informal Plan's responsibilities. *Burks v. American Cast Iron Pipe Co.*, 212 F.3d 1333, 1337 (11th Cir. 2000), *cert. denied*, 531 U.S. 1074 (2001).

CONCLUSION

For these reasons, the Informal Plan respectfully prays that the Court grant the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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